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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,965	11/13/2003	Junichi Ogikubo	450100-04811	9424

7590 11/28/2007  
William S. Frommer, Esq.  
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EXAMINER
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DURNFORD GESZVAIN, DILLON

ART UNIT	PAPER NUMBER
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2622

MAIL DATE	DELIVERY MODE
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11/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/712,965

Applicant(s)

OGIKUBO, JUNICHI

Examiner

Dillon Durnford-Geszvain

Art Unit

2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/15/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Claims **1-14** are pending and claims **1-14** are amended.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims **1-14** have been considered but are moot in view of the new ground(s) of rejection.

### ***Drawings***

3. The drawings were received on 8/28/2007. These drawings are not acceptable. The drawings are not in compliance with 37 C.F.R. § 1.84 (c). Any drawings submitted after the filing date of the application must be labeled "Replacement Sheet."

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim **6** is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is no support in the specification as originally filed for the signal processor controlling the sampling frequency of the audio data based on the set frame rate. There is only support for the controller controlling the sampling frequency based on the set frame rate. This support can only be found in the claims as originally filed and the summary of the invention; where the summary of the invention is simply the claims written out in paragraph form. Therefore, the signal processor controlling the sampling frequency of the audio signal based on the set frame rate is new matter and must be removed from the claims.

6. Claims 6 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims contain a limitation reciting controlling the sampling frequency of audio data based on the set frame rate of image data. The only places where this limitation is mentioned in the specification as filed is in the claims and the summary of the invention. There is no disclosure as to how this would be carried out or what sampling frequency would be used in accordance with the different frame rates. There is not even one mention of any specific sampling frequency. Therefore one of ordinary skill in the art would have to perform undue experimentation in order to make the an apparatus work as claimed.

***Claim Rejections - 35 USC § 102***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1, 2, 4, 5, 7-9, 11, 12 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by US 2004/0081437 (Asada).

As to claim 1, Asada teaches an imaging apparatus comprising:

an imaging device 101 (see Fig. 27) for reading a signal captured by an image pickup device to generate an image signal based on the image captured by said image pickup device (see [0124]);

a signal processor 101 for generating image data of a predetermined frame rate based on said generated image ([0124]);

a controller (not shown) for controlling said imaging device or said signal processor to set a variable frame rate of said image data to a set frame rate, and for generating associated information for indicating at least said frame rate ([0124] and note that the frame rate is set in accordance with signal 102 and generates associated information as rate information in the recording unit 103); and

a transmitter 103 for combining said associated information with said image data to transmit combined data ([0124]).

As to claim 2, Asada further teaches the imaging apparatus according to claim 1, wherein said controller sets the variable frame rate of said image data by altering a

reading frequency at which the captured signal is read from said image pickup device ([0124]).

As to claim 4, see the rejection of claim 1 and note that Asada further teaches the imaging apparatus of claim 1, wherein said controller sets the variable frame rate of said image data by altering a reading frequency at which the captured signal is read from said image pickup device and by controlling said signal processor to add said image data on a frame basis ([0124] and [0125])

As to claim 5, see the rejection of claim 1 and note that Asada further teaches the imaging apparatus according to claim 1, wherein said controller adds a sub-frame number to each of the frames of said set frame rate included within one frame period of a reference frame rate and includes said sub-frame number in associated information ([0129]).

As to claim 7, see the rejection of claim 1 and note that Asada further teaches the imaging apparatus of claim 1, further comprising a signal recording apparatus 103 for receiving said combined associated information and said image data to record the combined associated information and image data on a recording medium ([0133]).

Claims 8, 9, 11, 12 and 14 are method claims that correspond to the apparatus claims 1, 2, 4, 5 and 7 respectively and therefore are rejected on the same grounds but

drawn to a method.

***Claim Rejections - 35 USC § 103***

9. Claims **3** and **10** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2004/0081437 (Asada) in view of US 7,047,305 (Brooks).

As to claim **3**, see the rejection of claim **1** and note that what Asada does not teach is that the frame rate is changed through frame-skipping. However, Brooks teaches a video apparatus for changing the frame rate of an output video by frame-skipping (Column 7 lines 51-67). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used frame-skipping to vary the frame rate of Asada using the method of Brooks as this would allow for a preview image to be shown at a higher frame rate than that used to store images allowing memory space to be conserved while still allowing for accurate preview information to be obtained.

Claim **10** is a method claim that corresponds to the apparatus claim **3** and therefore is rejected on the same grounds but drawn to a method.

10. Claims **6** and **13** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2004/0081437 (Asada) in view of US 5,359,464 (Wilkinson).

As to claim **6**, Asada is silent regarding recording an audio signal. However, Wilkinson teaches a recording apparatus for recording images at various frame rates

and recording audio at a corresponding sampling rate (Column 3 lines 48-62 and Column 4 lines 8-20). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have recorded an analog audio signal at a sampling frequency based on the set frame rate as is done in Wilkinson as this would allow for the video and audio to be read out by the apparatus of Asada in view of Wilkinson.

Claim **13** is a method claim that corresponds to the apparatus claim **6** and therefore is rejected on the same grounds but drawn to a method.

The rejections of claims **6** and **13** were made in light of the rejection of the claims under 35 U.S.C. § 112.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the



shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dillon Durnford-Geszvain whose telephone number is (571) 272-2829. The examiner can normally be reached on Monday through Friday 8 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lin Ye can be reached on (571) 272-7372. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dillon Durnford-Geszvain

11/20/2007



LIN YE  
SUPERVISORY PATENT EXAMINER